
FORM SUMMARY

Name of Form: Prisoner's Petition for Waiver of Prepayment of Fees/Costs Based on Imminent Danger - Affidavit of Indigency

Form Number: CV-440

Statutory Reference: §814.29, Wisconsin Statutes

Benchbook Reference: CV 46-4

Purpose of Form: To allow a prisoner who claims to be in imminent danger of serious physical harm and who seeks to begin an action or special proceeding without prepayment of filing fees, costs or security for costs.

Who Completes It: Prisoner completes the affidavit portion.

Distribution of Form: Original to court file, copy (to be provided by prisoner) to be sent to the Department of Justice after the court enters an order (CV-441).

Accompanying Forms: The prisoner is required to provide two complete copies of the affidavit of indigency and other attachments. The attachments are documentation that the prisoner has completed the exhaustion of all available administrative remedies if required. Exhaustion is required if the underlying proposed action relates to prison or jail conditions. The prisoner is *not* required to provide either:

- a certified copy of the prisoner's trust fund account statement, or,
- a certification from the Department of Justice (JD-SL-22) concerning the number of prior dismissals.

The prisoner must also provide sufficient copies of the summons/complaint/petition for potential service on the defendants/respondents.

New Form/Modification: Modification, last update 12/01.

Modifications: Deleted duplicate wording "prepayment of" in title.

Previous modification: Added word "prepayment" to title, which now reads "Prisoner's Petition for Waiver of Prepayment of Fee/Costs Based on Imminent Danger - Affidavit of Indigency".

Comments: The new prison litigation law (1997 Wisconsin Act 133) becomes effective September 1, 1998. This law creates significantly different procedural requirements for a prisoner seeking to commence an action or special proceeding without prepayment of filing fees, costs, or security for costs. Because of the different decisions that must be

made by the court, this specialized form must be used in lieu of CV-410, the general Petition for Waiver of Fees/Costs--Affidavit of Indigency and Order.

The new law prohibits a prisoner from filing an action without prepayment of fees and costs when the prisoner has accumulated three or more dismissals under §802.05(3)(b)1-4, Wisconsin Statutes. However, if a prisoner is claiming imminent danger of serious physical injury, the three dismissals rule does not apply. The prisoner is still required to comply with all other procedural requirements, including:

- exhaustion of available administrative remedies, if the underlying proposed action involves prison or jail conditions; and,
- completion of the financial portion of the affidavit.
- authorization in writing to the agency having custody of the prisoner's trust fund account (on DOC form 1930 provided by the Wisconsin Department of Corrections) to forward payments from that account to cover filing fees and costs.

For a more detailed statement of the court's duties upon receipt of a prisoner's affidavit, see the form summary for the court order, CV-441.

If the prisoner is not alleging to be in imminent danger of physical injury, a separate petition (CV-438) and court order (CV-439) should be used because the factors that the prisoner and court must consider are different.

About this form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.